

ITEM 4

6:15 p.m.

APPLICANT: City of Bloomington (study item)

REQUEST: Discuss potential City Code Amendments – Firearm Dealers

After noting that a review of firearm dealer standards is a project on the Planning Commission's 2016 Work Plan, Markegard presented the following information on firearm dealers:

- State Laws
 - o Markegard highlighted State laws regarding firearm dealers, including Section 471.633: "The legislature preempts all authority of a home rule charter or statutory city including a city of the first class, county, town, municipal corporation, or other governmental subdivision, or any of their instrumentalities, to regulate firearms, ammunition, or their respective components to the complete exclusion of any order, ordinance or regulation by them except that: (a) a governmental subdivision may regulate the discharge of firearms; and (b) a governmental subdivision may adopt regulations identical to state law. Local regulation inconsistent with this section is void."
 - o And Section 471.635: "Notwithstanding section 471.633, a governmental subdivision may regulate by reasonable, nondiscriminatory, and nonarbitrary zoning ordinances, the location of businesses where firearms are sold by a firearms dealer. For the purposes of this section, a firearms dealer is a person who is federally licensed to sell firearms and a governmental subdivision is an entity described in sections 471.633 and 471.634."
 - o Markegard noted the City has the ability to regulate the location but cannot regulate the security and operations of the use. There are State laws that apply to security and operations.
- Use classification
 - o The City Code defines firearms dealer as "Any person or business engaged in the sale, lease, trade or other transfer of firearms or ammunition at wholesale or retail. Firearms dealer shall not include any person only engaged in the business of repairing firearms."
 - o Firearm dealers are currently allowed as a conditional uses in the B-2, C-2 and C-3 Zoning Districts. The Code does not currently apply sensitive use buffers for firearms dealers.
- Home business
 - o "The sale, lease, or trade of firearms or ammunition" is prohibited as a home business under Code Section 21.302.13(c)(3)(C).
- Best practices review
 - o How do other cities regulate firearm dealer standards?
 - Some U.S. cities regulate security and operation standards. The Minnesota State Law says cities cannot address security or operation measures. However, Minnesota cities can address the use through use classification, zoning districts and sensitive land use buffers.

- Markegard mentioned that the packet includes more detail on best practices in other cities and that he would cite examples while discussing the three issues.
- Use classifications
 - The staff work groups initial thought is to classify firearm sales based on whether the sales are an incidental or primary use. Incidental sales could be defined as sales that do not cover more than 10% of the total floor area of the building.
 - Staff reviewed the ten largest suburban cities in the region plus Minneapolis and St. Paul. The suburban cities do not require sensitive use buffers from firearms dealers. However, Minneapolis and St. Paul do have sensitive use buffers. Markegard presented a table highlighting the Minneapolis and St. Paul buffers.
 - While Bloomington does not currently have sensitive use buffers for firearms dealers, it does have such buffers for several other uses. Markegard presented a table of sensitive use buffers currently applicable in Bloomington.
- Primary vs. incidental sales
 - Markegard said staff used GIS to analyze parcel counts under various scenarios and presented a series of maps.
 - Primary sales are currently allowed in the B-2, C-2 and C-3 Zoning Districts with a total of 207 parcels. Incidental sales could also be allowed in those districts.
 - Incidental sales without primary sales could also be allowed in all zoning districts that allow retail uses: the B-4, C-5, CX-2, CR-1, LX Zoning Districts with a total of 88 additional parcels.
 - As a test, staff applied Minneapolis' sensitive use buffers for firearm dealers and found that primary plus incidental sales in the B-2, C-2 and C-3 Zoning Districts would be limited to 31 parcels. Also, incidental sales only in the B-4, C-5, CX-2, CR-1 and LX Zoning District would be limited to an additional 41 parcels.
 - The sensitive land use buffers for Minneapolis include areas within 250 feet of a residential zoning district, 500 feet of a place of assembly, K-12 school, child care center, park and library.
 - As another test, staff applied St. Paul's sensitive use buffers and found that primary plus incidental sales in the B-2, C-2 and C-3 Zoning Districts totaled 0 parcels. Also, incidental sales only in the B-4, C-5, CX-2, CR-1 and LX Zoning District totaled 17 parcels.
 - The sensitive land use buffers for St. Paul include areas within 1,000 feet of a residential zoning district, place of assembly, K-12 school, child care center, library, public recreation center and park.
 - To seek a balance between buffering sensitive uses and maximizing the number of parcels available for firearms sales, staff modeled another scenario with a buffer within 250 feet of a residential zoning district, day care and K-12 school. Primary plus incidental sales within the B-2, C-2 and C-3 Zoning Districts would be available to 40 parcels whereas incidental sales only would be available to an additional 47 parcels, both a higher number of parcels than using the Minneapolis or St. Paul buffers.
- Feedback

Fischer said his lack of support for the recently proposed Max Guns and Ammo firearm dealer was not because he had anything against firearms dealers but because of the location and close proximity to a school and residential area. He liked the scenario with 250 foot buffer from a school, residential area and day care because of the range of locations still available while addressing the proximity issue and said he thought it was a reasonable compromise.

Batterson stated Bloomington is primarily residential zoned. He said the 250 foot buffer may be too restrictive and limiting and would like to see the results if residential were removed as a sensitive use. Markegard said eliminating the residential zone buffer would allow more areas for firearm dealers and that staff would prepare a map and count.

Goodrum said the 10% of floor area may be too small and said he thought some local sporting goods stores may be above the threshold. How many firearm uses would become nonconforming? He also asked if the residential zones buffered include the mixed-use zoning districts. Also, what happens when a day care center locates near a firearm dealer after the firearm dealer has opened? The firearms dealer would become legally nonconforming. Goodrum said he liked the Minneapolis buffer scenario.

Markegard said staff is not aware of a firearms dealer that would be made nonconforming by the compromise scenario. Some firearms dealers that existed in the past would have become nonconforming if they were still in existence. Markegard noted there are two illegally located firearms dealers on Lyndale Avenue that would be within the 250 foot sensitive use buffers, however they are already illegal by virtue of being in an industrial area, so it would not be a change in use status.

Markegard said staff's thought was not to apply the sensitive use buffer to residential uses in mixed use zones, given that residents in these zones tend to have different expectations about surrounding uses than do residents in purely residential zones.

Goodrum asked if a conditional use permit would be required. Markegard said staff's thought is to suggest that primary sales would require a conditional use permit whereas incidental sales would be a permitted use.

Bennett said she liked separating the sales by primary and incidental sales. She agreed that the 10% of floor area is too small and recommended 10% of sales instead. She asked if police response time could be considered as a buffer.

Markegard noted staff considered a threshold of 10% of sales but was concerned about lack of access to sales data, about the difficulty of conducting regular audits to ensure compliance and about potential fluctuations in sales from month to month. The 10% of floor area threshold is relatively easy to measure and is less likely to fluctuate over time. There is a work group that includes staff from Public Health, Police, Legal, Licensing and Planning and he will bring up the issue of proximity to a police station for lower response time.

Goodrum stated there are less police patrols along the edge of the City and a quick escape route along the Interstate 494 corridor.

Fischer's said his main concern with Max Guns and Ammo was that it was directly adjacent to a residential area. Firearms dealers are often the targets of robbery and areas where Police will need to respond, from his perspective as a Policeman, it is good to have a buffer between such uses and residential areas.

Batterson stated there was no good access behind the Max Guns and Ammo site and no visibility. When reviewing the potential locations for firearm dealers, it is important to look at the physical makeup of the building. Does it have a rear access for security? Markegard said such as standard may contradict Minnesota State Law's that limit City standards to location only.

Bennett asked about the sensitive land use buffers. Markegard said the work group is still identifying sensitive land use buffers. From a parcel count standpoint, the biggest impact is the residential zoning district buffer. In Bloomington, places of assembly and parks are mostly in residential zoning districts. Day care centers, group homes and libraries are often residentially zoned.

- Firearms manufacturing, warehousing and distribution
 - o Markegard said they could be allowed in industrial zones, potentially without sensitive use buffers.
- Firearms Office
 - o Markegard said the classification could be defined as having no firearms or ammunition on site, just office use only. Firearms office could be located anywhere where office use is allowed, including out of the home.
- Firing range
 - o Markegard noted there are two approaches for categorizing a firing range: as a recreational use allowed in several commercial districts or as more of a sports training use that could be limited to industrial areas only. Sports training facilities are allowed in industrial areas today. Recreational uses (such as bowling alleys) are not allowed in industrial zones because of concerns on erosion of the industrial land use base. The thought is to apply the same sensitive land use buffers that would apply to firearms dealers.

Spieß asked do you have to allow a firing range. Markegard said it would be a question for the Legal Department, but generally speaking, it is inadvisable to ban any use entirely from the City.

Fischer asked if Bloomington still has the outdoor firing range. Markegard confirmed and said it is residentially zoned. The site would become legally non-conforming and Police has confirmed that there are no expansion plans.

Willette asked if there is a range at the armory. Markegard was unsure but will look into it.

Fischer asked if there could be an exception for government use of a firing range. Markegard said it is possible but would be better to treat all firing range uses the same.

Goodrum said his preference would be to treat firing ranges similar to recreational uses.

Batterson noted firing ranges are often attached to a gun store, another reason to allow them in commercial districts. There should be a way for those uses to be combined. What if the residential uses were eliminated from the buffers? Markegard said staff would prepare a map to evaluate but removing residential districts as a sensitive use would not address the concerns raised by Commissioner Fischer regarding there being a higher chance of robbery and crime at a firearms dealer and therefore concern that it not be adjacent to residential uses so that neighbors are not caught up in the middle of a crime scene response.

Fischer noted the air from a firing range often has lead contamination. A firing range could require environmental regulations, barriers, noise regulations, etc. Markegard said a buffer from residential areas for firing ranges could be advantageous to minimize issues with noise and environmental impacts.

Fischer asked if there is a distinction between indoor and outdoor firing ranges. Markegard stated there is no difference today, but could be. Outdoor firing ranges would have higher levels of impact.

Goodrum said he is not opposed to firing ranges but he would like more information. The City of Osseo opened a firing range close to their city hall. He believed shooting a gun at a firing range is the same as selling a gun at a gun store. He would like more information on firing ranges.

Batterson said firing ranges as a recreational use may be advantageous. Industrial areas are more closed off and dark, making them less suited for the use.

Fischer was less concerned about the separation of firing ranges from sensitive uses than the separation of firearms dealers from sensitive uses. He said there is less chance for crime at firing ranges. Markegard said the firearm sales often are collocated with firing ranges.

Batterson asked if a handgun distributor with inventory could locate in an industrial zoning district. Markegard said yes. The sensitive land use buffers could be applied to manufacturing of firearms. He noted that some manufacturers only manufacture single components of a firearm and would never have inventory of the full firearm. Fischer noted the security measures will be high for a manufacturing use, often with armed security.

The next steps for discussion include a study session at City Council on May 9th. Public hearings on the draft ordinance are anticipated to occur this summer.

The meeting adjourned at 7:04p.m.

Prepared By: EO Reviewed By: GM

Approved By Planning Commission: June 16, 2016